IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 859 OF 2003

M/s. Sandu Mistry & Sons ..Petitioner.

V/s.

Smt. Bharti Bharat Kumar Kale & Ors. ..Respondents.

Shri Pankaj Das i/by Rajesh Datar for Applicant.
Shri K.V.Saste, APP for Respondent- No.3-State.

CORAM : A.M.KHANWILKAR, J.
DATED : NOVEMBER 29, 2004

PC :-

. Two contentions have been raised before me. In the first place it is argued that the conclusion reached by the court below that the statutory notice was not served on accused No.2 is inappropriate. I find no substance in this submission. The court below has recorded good reasons in para -4 of its order, while dealing with this aspect. No interference is called for with the approach and conclusion reached by the court below.

2. It is next contended that accused No.2 had not challenged the order, issuing process under section 138 of the Negotiable Instruments Act. If it is so,

it was not open to the revisional court to set aside the order, issuing process under section 138 of the said Act. This submission overlooks that the revisional court has recorded finding that the statutory notice was not served on accused No.2. With that finding, the criminal action under section 138 of the Negotiable Instruments Act, could not proceed. Merely, because accused No.2 had not questioned the order, issuing process, that does not mean that the revisional authority was incompetent to set aside the order of issuing process under section 138 of the said Act. Besides, accused No.2 has appeared in the revisional proceedings through his counsel and was heard. Hence, no interference is warranted in the findings reached by the court below. Hence, dismissed. Ordered accordingly.

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